

[REDACTED]
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April 6, 2018

Toronto Local Appeal Body
40 Orchard View Boulevard, Suite 211
Toronto Ontario M4B 1R9

Dear Sir or Madam:

Re: Toronto Local Appeal Body Public Consultation

I would like to offer the following technical and policy comments on the Toronto Local Appeal Body (TLAB).

I would like to preface my comments by acknowledging the transparency of the TLAB's procedures and decision making process, which is very helpful to all concerned.

Technical Comments

- Form of decisions
 - While acknowledging that TLAB members' independence extends to their decisions, it would be helpful if the *form* of decisions was more consistent and, in particular,
 - parties and participants (and their representatives) are listed at the beginning of the decision, and
 - the evidence of experts clearly identifies the party or participant on whose behalf the evidence is being given.
- Searching decisions
 - The ability to search decisions on the TLAB website is very limited.
 - This makes it difficult to research specific aspects of TLAB decisions for precedents, procedural approaches, etc.
 - Providing greater capacity to search decisions on the TLAB website would be of significant assistance to persons wishing to appear before the TLAB.

- CanLII
 - It would be very useful if TLAB decisions were posted to the CanLII database, which would provide non-subscription based, electronic access to TLAB decisions in a fully searchable environment.
- TLAB Procedure
 - The TLAB Rules of Procedure, while comprehensive, can appear very technical, and thus make the Rules inaccessible to persons without a legal or land use planning background.
 - This can be a barrier to participation in TLAB appeals by persons without access to legal assistance.

Policy Comments

- Maintenance of Unequal Playing Field – Cost of Participation in TLAB Appeals
 - The practice of the Ontario Municipal Board (OMB) of relying exclusively on the land use planning evidence of expert witnesses, and the practical necessity for parties/participants to have legal counsel to present their case and examine other parties' witnesses, meant that participation in OMB proceedings (including minor variance proceedings) was very expensive.
 - The cost of engaging at least two professionals (expert planning witness, lawyer to examine a party's witness and examine witnesses of the other parties) often presented an insurmountable financial barrier to the participation of residents and resident associations in OMB proceedings.
 - The TLAB has maintained these practices of the OMB:
 - the evidence of lay witnesses appears to be given little, if any, weight by TLAB members in their adjudication of appeals, and
 - Rule 14.3 of the TLAB's Rules of Procedure provides that "An expert witness cannot be a Representative in the same Proceeding".
 - The result of Rule 14.3 and the TLAB's exclusive reliance on expert evidence is that a person wishing to have any chance of influencing the outcome of an appeal must engage both an expert witness to provide land use planning evidence and a representative (likely a lawyer) to examine the person's own witness and cross-examine the witnesses of other parties/participants.

- Consequently, the same often insurmountable financial barriers to participation of residents and resident associations in OMB proceedings continue to apply equally to their participation in TLAB proceedings. As was the case at the OMB, the proponents of developments invariably have sufficient resources to effectively participate in TLAB proceedings.
- In this significant respect, the TLAB has, unfortunately, maintained the decidedly unequal playing field between proponents of developments and local residents/resident associations, in terms of the financial resources required to participate in appeals, that previously existed at the OMB.

Thank you for the opportunity to comment on the TLAB.

Yours Truly

Jeffrey Levitt

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